

48A C.J.S. Judges § 64

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

E. Termination of Term

2. Termination by Age Limit or Retirement

§ 64. Generally

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West's Key Number Digest

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By force of constitutional or statutory provision, the period of service of judges may compulsorily terminate after they have attained a certain age.

A state constitutional requirement may prohibit all persons over a specified age from holding judicial office,¹ thus setting a mandatory retirement age.² Further, a state constitutional provision may authorize the legislature to enact legislation regarding mandatory retirement of judges based on age if it so chooses.³

The validity of such compulsory retirement provisions for judges has been upheld,⁴ including those providing different retirement age qualifications for different classes of judges.⁵ Such provisions do not deny voters the opportunity to vote for the judicial candidates of their choice.⁶ Nor do mandatory retirement provisions violate due process⁷ because while judges have a due process right to pursue their chosen profession, the right is not fundamental.⁸ Such provisions likewise do not constitute a denial of equal protection⁹ because they are rationally related to the State's interest in bringing in younger judges while retaining the services of willing and able retired judges in permitting the orderly attrition of judges, in promoting the advancement of general considerations of judicial efficiency, and in insuring the fitness of the judiciary as a whole.¹⁰

Where the tenure of a judge is fixed by the constitution, a statute providing for compulsory retirement is invalid insofar as it conflicts with the constitution.¹¹ Where the constitution provides a method of compulsory retirement, that method is exclusive, and the legislature cannot validly provide for any other way.¹²

Retirement of chief justice.

Since the office of a chief justice is different from that of an associate justice, there can be no provision for the voluntary or compulsory retirement of the chief justice to service as an associate justice.¹³

Retirement as influenced by pension rights.

Pursuant to some provisions, a judge becomes subject to a mandatory retirement provision upon joining a statutory state pension system.¹⁴ Pursuant to other provisions, an exception to the mandatory retirement age is permitted in order to allow judges to remain in office until they have served long enough to secure certain pension rights.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Provision of state constitution establishing a mandatory retirement age of 70 for judges was not rendered invalid or ineffective by other provisions of state constitution, including provisions securing equal protection, freedom of expression, and separation of powers, and provision prohibiting convicted felons from seeking or holding public office; mandatory retirement provision, as the more specific provision, prevailed over the remainder of state constitution with respect to mandatory judicial retirement, and judges who challenged the mandatory retirement provision did not explain why it could not be given effect without running afoul of the other provisions. [La. Const. art. 1, §§ 3, 7, 10.1](#); [La. Const. art. 2, § 2](#); [La. Const. art. 5, § 23\(B\)](#). [Cantrell v. State, 347 So. 3d 644 \(La. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Md.—Bernstein v. State, 422 Md. 36, 29 A.3d 267 \(2011\) \(70 years\).](#)
- 2 [U.S.—Lerner v. Corbett, 2013 WL 5314894 \(M.D. Pa. 2013\) \(applying Pennsylvania law\).](#)
[Pa.—Friedman v. Corbett, 72 A.3d 255 \(Pa. 2013\).](#)
[Fla.—Advisory Opinion to Governor re Judicial Vacancy Due to Mandatory Retirement, 940 So. 2d 1090 \(Fla. 2006\).](#)
[As to provisions setting a maximum age as a qualification for attaining judicial office, see § 42.](#)
- 3 [Ill.—Maddux v. Blagojevich, 233 Ill. 2d 508, 331 Ill. Dec. 749, 911 N.E.2d 979 \(2009\).](#)
- 4 [N.C.—Martin v. State, 330 N.C. 412, 410 S.E.2d 474 \(1991\).](#)
[U.S.—Lerner v. Corbett, 2013 WL 5314894 \(M.D. Pa. 2013\) \(applying Pennsylvania law\).](#)
- 5 [Mo.—O'Neil v. Baine, 568 S.W.2d 761 \(Mo. 1978\).](#)

Differentiation between judges and elected officials permissible

- Vt.—Aronstam v. Cashman, 132 Vt. 538, 325 A.2d 361 (1974).
- 6 U.S.—Traflet v. Thompson, 594 F.2d 623 (7th Cir. 1979).
- Pa.—Friedman v. Corbett, 72 A.3d 255 (Pa. 2013).
- No disenfranchisement of voter**
Vt.—Aronstam v. Cashman, 132 Vt. 538, 325 A.2d 361 (1974).
- 7 N.Y.—Maresca v. Cuomo, 105 A.D.2d 193, 483 N.Y.S.2d 690 (1st Dep't 1984), order aff'd as modified on other grounds, 64 N.Y.2d 242, 485 N.Y.S.2d 724, 475 N.E.2d 95 (1984).
- Under state constitution**
Pa.—Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013).
- 8 Pa.—Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013).
- 9 Nev.—Nevada Judges Ass'n v. Lau, 112 Nev. 51, 910 P.2d 898 (1996).
- U.S.—Lerner v. Corbett, 2013 WL 5314894 (M.D. Pa. 2013) (applying Pennsylvania law).
- Under state constitution**
Pa.—Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013).
- 10 Pa.—Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013).
- 11 Mass.—In re Opinion of the Justices, 271 Mass. 575, 171 N.E. 237 (1930).
- 12 Mass.—In re Opinion of the Justices, 271 Mass. 575, 171 N.E. 237 (1930).
- 13 Mass.—In re Opinion of the Justices, 271 Mass. 575, 171 N.E. 237 (1930).
- 14 N.J.—Division of Pensions v. Lindeman, 103 N.J. Super. 375, 247 A.2d 354 (Ch. Div. 1968), judgment aff'd, 53 N.J. 70, 248 A.2d 427 (1968).
- As to judges' pensions and retirement benefits, see §§ 212 to 214.
- 15 U.S.—Traflet v. Thompson, 594 F.2d 623 (7th Cir. 1979).